Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000676-001 DT 01/03/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

STATE OF ARIZONA

BRIAN W ROCK

v.

DANA EDO CONEDERA (001)

CAMERON A MORGAN

PHX MUNICIPAL CT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case Number 13792450–01, 02.

Defendant-Appellant Dana Edo Conedera (Defendant) was convicted in Phoenix Municipal Court of DUI (impaired to the slightest degree) and DUI (BAC of 0.08 or more within 2 hours of driving). Defendant contends the trial court erred in denying his Motion To Suppress, alleging the officer did not have the requisite reasonable suspicion to make the stop. For the reasons stated below, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On January 14, 2010, at 10:40 p.m., Officer Grommes of the Phoenix Police Department observed a vehicle driven by Defendant fail to stop at a red light, and then make an improper (wide) right turn. Accordingly, Defendant was stopped and subsequently charged with violating A.R.S. § 28–1381(A)(1) (DUI—impaired to the slightest degree), § 28–1381(A)(2) (BAC of 0.08 or more within 2 hours of driving), and a civil traffic statute that is not part of this appeal. Prior to trial, Defendant filed a Motion To Suppress on the grounds that the traffic stop violated Defendant's rights under the U.S. and Arizona Constitutions. The trial court held an evidentiary hearing on May 31, 2011. Based on the evidence presented, the trial court denied the Motion. Thereafter, Defendant submitted the issue of his guilt or innocence to the trial judge based upon the stipulated record. Defendant was found guilty of the DUI offenses. On May 31, 2011, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUE: DID THE TRIAL COURT ERR WHEN IT DENIED DEFENDANT'S MOTION TO SUPPRESS.

In reviewing a trial court's ruling on a motion to suppress, an appellate court is to defer to the trial court's factual determinations, including findings based on a witness' credibility and the reasonableness of inferences that the witness drew, but is to review de novo the trial court's legal conclusions. *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); *State v. Olm*, 223 Ariz. 429, 224 P.3d 245 ¶ 7 (Ct. App. 2010). A lower court's ruling on the legality of a traffic stop presents the appellate court with a mixed question of law and fact. *Gonzalez-Gutierrez*, at 119, 927 P.2d at 779. The appellate court views the facts in the light most favorable to sustaining the trial court's ruling. *State v. Stanley*, 167 Ariz. 519, 525, 809 P.2d 944, 950 (1991); *State v. Swanson*, 172 Ariz. 579, 582, 838 P.2d 1340, 1343 (Ct. App. 1992).[1] A trial court's ruling on a motion to suppress will not be reversed on appeal absent clear and manifest error. *State v. Gulbrandson*, 184 Ariz. 46, 57, 906 P.2d 579, 590 (1995).

Law enforcement officers are only required to have a reasonable, articulable suspicion of criminal activity or civil traffic violations, not probable cause, before making an investigatory stop. *Tornabene v. Bonine, ex rel. Arizona Highway Dept.*, 203 Ariz. 326, 336, ¶ 27, 54 P.3d 355, 365 (Ct. App. 2002). Pursuant to A.R.S. § 28–1594, a police officer may stop and detain a person as is reasonably necessary to investigate an actual *or suspected* violation of Title 28. Thus, the issue at the suppression hearing is not whether Defendant was *in fact* responsible for the civil traffic violation that gave rise to the stop. Instead, the relevant question is whether the officer reasonably suspected that Defendant had violated Title 28 in any manner. In the case *sub judice*, the officer observed Defendant fail to stop at a red light, and make an improper right turn. Courts must view the facts through the eyes of the trained law enforcement officer. *United States v. Cortez*, 449 U.S. 411, 418 (1981); *State v. Teagle*, 217 Ariz. 17, 170 P.3d 266, ¶ 26 (Ct. App. 2007). Founded suspicion can be based on inferences drawn from innocent-appearing facts by experienced officers. *Id*. This Court must consider the totality of the circumstances in assessing the reasonableness of the suspicion that prompted the stop. *Terry v. Ohio*, 392 U.S. 1 (1968); *United States v. Cortez*, 449 U.S. at 417; *United States v. Arvizu*, 534 U.S. 266 (2002); *State v. Teagle*, at ¶ 26.[2] "By definition, reasonable suspicion is something short of probable cause." *State v. O'Meara*, 198 Ariz. 294, 296, 9 P.3d 325, 327 (2000). Although reasonable suspicion must be more than an inchoate "hunch," the Fourth Amendment only requires that police officers articulate some minimal, objective justification for an investigatory detention. *State v. Teagle*, at ¶ 25, *citing United States v. Sokolow*, 490 U.S. 1, 7 (1989) (noting that reasonable suspicion represents "a minimal level of objective justification" that is "considerably less proof of wrongdoing by a preponderance of the evidence").

[1] The State's burden of proof on a pretrial motion to suppress is a preponderance of the evidence. Rule 16.2, Ariz. R. Crim. P.

[2] The reasonableness of a vehicular stop does not depend on whether the traffic infractions are designated as civil or criminal. *State v. Boudette*, 164 Ariz. 180, 791 P.2d 1063 (Ct. App. 1990).

Defendant testified that he stopped at the red light and made his right turn into the curb lane. The trial court is in the best position to assess the credibility of witnesses. *State v. Gallagher*, 169 Ariz. 202, 203, 818 P.2d 187, 188 (Ct. App. 1991). In addressing the role of an appellate court in reviewing conflicting evidence and testimony, the Arizona Supreme Court has said the following:

> Something is discretionary because it is based on an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge, who has a more immediate grasp of all the facts of the case, an opportunity to see the parties, lawyers and witnesses, and who can better assess the impact of what occurs before him. Where a decision is made on that basis, it is truly discretionary and we will not substitute our judgment for that of the trial judge; we will not second-guess. Where, however, the facts or inferences from them are not in dispute and where there are few or no conflicting procedural, factual or equitable considerations, the resolution of the question is one of law or logic. Then it is our final responsibility to determine law and policy and it becomes our duty to "look over the shoulder" of the trial judge and, if appropriate, substitute our judgment for his or hers.

State v. Chapple, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983) (citation omitted). Because the issue in the present case requires an "assessment of conflicting procedural, factual or equitable considerations which vary from case" rather than a "question . . . of law or logic," it is not appropriate for this Court to "substitute [its] judgment for that of the trial judge." This Court therefore concludes the trial court correctly resolved this case.

III. CONCLUSION.

Based on the foregoing, this Court concludes that the trial court did not err when it denied Defendant's Motion To Suppress.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Phoenix Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Phoenix Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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